



# RAVALLI COUNTY ATTORNEY

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October 22, 2007

**RECEIVED**

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**OCT 24 2007**

**Ravalli County Commissioners**

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Re:

Dear Bill:

Thank you for your October 16, 2007 letter as well as your September 21, 2007 letter and certainly the numerous phone calls that we have had in this matter before and after those times. First off, I will remind you of my somewhat precarious statutory position, in that I am not always allowed to speak with my "clients" about many matters. Because I cannot meet with a quorum of the Commission regarding subdivision proposals that will be before them for review, it is difficult to evaluate their interest in proposals and get back to you with accurate information as quickly as I would like to.

I certainly appreciated your September 21, 2007 letter where you laid out the legal basis to your objection to the 21 lot road improvement requirement. While I agree with much of what is stated there, I do not necessarily agree that our road regulations are illegal in this instance. Many aspects of the law do appear unfair when looked at too closely. Anyone who has missed a statute of limitations by one day or anyone accused of a crime that is just a smidge over the misdemeanor bar into a felony could write a book about that.

I am certainly not implying that the burden on . to pave three miles of road is insignificant. In large part because of that, I am hopeful that we can work out a solution that preserves the County's needs but also provides with some relief from all of that. While I obviously cannot make any promises, your request to use pro-rata funds collected from other developers in the 8 mile area to off-set costs is certainly a matter worth serious consideration in concert with other proposals.

As for points 2 and 3 of your proposal, I do not believe at this time that the County has interest in doing them. Certainly point 2, regarding the fee assessed on each parcel, appears to merely be your current variance request. As for the 3rd, I do not believe that the County has any interest in obligating itself to create a rural improvement district and certainly with all the various protest provisions built into those statutes, the County could not guarantee that one could be created. As such, my recommendation to the Commission would be against doing so. Additionally, it is unlikely that this (or any) Commission would explicitly and unilaterally tax the current residents of an area to pay for future development. On the other hand, if the residents of the area came forth with a proposal for a rural improvement district, that would likely be another matter entirely.

You have raised the specter of litigation with your letters and I think that it would be legally allowable to meet together to discuss this matter in a closed door meeting as such. However, many of the Commissioners seem concerned about the public perceptions involved in such meetings (as you are aware, we are currently being sued over public participation in the handling of the *Lords* suit) and I think would prefer not to do so. What I have suggested as an alternative would be a get together of local landowners, via the proposed voluntary zoning district in the area, or perhaps one of the potential RSID districts that the County has been formally and informally approached about. I think that this would give everyone a chance to discuss "big picture" development questions in the area. I think the Commissioners are willing to meet in good faith to discuss such a matter. I have spoken with some of them, individually, about the 8 Mile area, though I have not mentioned you, your client, or the specific development by name, so as not to potentially prejudice anyone.

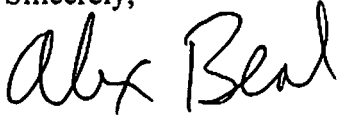
Let me be clear, however. Ravalli County views its subdivision regulations regarding road improvements as entirely enforceable. We wish to avoid litigation because we do not believe that anyone benefits from it and because it appears that there is the potential for a solution that is beneficial for everyone. However, we view the onus on finding a solution to be on you and . . . . We are viewing this process with an open mind in the hopes that we can reach an agreement in which . . . . is able to spread any potential improvements to 8 Mile Creek Road amongst the other developers who would benefit from it. That was certainly my hope in discussing with you postponing the planning board meeting in hopes that we could work out a solution prior to that meeting. As I mentioned at the time, we were perfectly willing and ready to proceed with the planning board hearing, although, the recommendation from the planning staff was to have been a rejection of your variance requests to pay a form of pro-rata rather than improve 8 Mile Creek Road.

Finally, I do not believe that litigation is in your client's best interests in this matter. If the Commissioners follow the advice of the planning department and deny . . . . variance request, his application will then be insufficient and unreviewable. If he chooses to sue at that time, he is likely to receive, at best, a declaration that the "21 lot" provision in our regulations is unenforceable. I would expect the judge to then remand the matter to the Commission for review of the subdivision within 60 days. Though I would not anticipate there to be any damages or attorneys fees awarded, should any be awarded I would expect them to be minimal, given the timeframes involved. As you can imagine, I do not anticipate the County abandoning an important regulation it believes is enforceable based upon a minimal threat of that sort. This is the very reason why the County has insurance coverage for its legal defense, so that it can make

the decisions it feels are correct without fear of taxing its staff with litigation.

As I mentioned in the last few conversations, I will be out of the office for approximately two weeks starting (hopefully) quite soon. I am certainly willing to discuss this matter up until then, and will continue to check in with the office when I can. Alternatively, you may be able to contact Mr. Corn or Ms. Hughes about this in my absence.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Beal". The signature is fluid and cursive, with the first name "Alex" and last name "Beal" clearly distinguishable.

Alex Beal

Deputy Ravalli County Attorney

AB/dp

cc: Ravalli County Commissioners (w/redactions)

Ravalli County Planning Department (w/o redactions)